

EASTERN DIVISION
No. 4:10-CR-89-BO
No. 4:16-CV-60-BO

ORDER

BACKGROUND

DISCUSSION


The government, having waived its procedural defenses, and petitioner both argue that application of *Johnson* and *United States v. Gardner*, __ F.3d __, No. 14-4533, 2016 WL 2893881 (4th Cir. 2016) (holding that a North Carolina conviction for common law robbery is no

longer a violent felony) to petitioner's criminal history results in insufficient qualifying predicate convictions necessary to be sentenced as an armed career criminal under 18 U.S.C. § 924(e). The Court agrees, and holds that resentencing of petitioner without application of the Armed Career Criminal Act is warranted.

CONCLUSION

Accordingly, for the foregoing reasons, petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 [DE 28] is GRANTED, petitioner's sentence is hereby VACATED, and this matter shall be set for resentencing by separate notice.

SO ORDERED, this 12 day of August, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE